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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,726

10/10/2006

Joseph A. Vella

21854-00070-US1

4371

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10/27/2009

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EXAMINER

MICHENER, JOSHUA J

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,726	<b>Applicant(s)</b> VELLA ET AL.	
	<b>Examiner</b> JOSHUA J. MICHENER	<b>Art Unit</b> 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 6 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5, 7-9 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/21/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 3644

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group II in the reply filed on 7/22/2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 1- 4, 6, and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

**The requirement is still deemed proper and is therefore made FINAL.**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Objections***

4. Claims 5, 7, 8, 9, and 11 are objected to because of the following informalities:

Art Unit: 3644

Claim 5 recites, "Apparatus" it should be - -An apparatus- - ;

Claims 7, 8, 9, and 11 recite, "Apparatus" it should be - -The apparatus- -;

Claim 9 recites, "amucolytic" it should be - -a mucolytic- -

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 5, 7, 8, 9, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

5. Claim 5 recites, "Apparatus *for* the collection of valuable chemical species from pregnant animal urine...suspended beneath the belly of the animal...attached to the perineum of the pregnant animal..." The preamble suggests applicant intends to claim "an apparatus" that is capable for collection of chemicals from animals. However, the underlined sections above appear to claim the apparatus in combination with an animal as it appears to be actively positively claimed as "suspended" and "attached" to the animal. Thus, it is unclear what invention Applicant intends to claim. Is it the apparatus as the preamble sets forth, OR the combination?

6. Claim 5 recites, "...which consists of a urine holding vessel...the urine collection and/or the holding vessel incorporates a removable urine permeable container containing an adsorbent material..." The use of the "and/or" clause in combination with the "consists of" clause appears to be contradictory making the intended claim scope unascertainable. A "consists of" clause is a

Art Unit: 3644

closed ended transitional phrase (see mpep 2111.03), however, the Examiner contends that used in combination with an alternative and/or clause makes it unclear as to the closed ended nature of the apparatus being claimed.

7. Claims 7 – 9, incorporate additional elements to those which are encompassed in the “consists of” clause thus making claims 7 – 9 improper indefinite dependent claims (see mpep 2111.03; *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948); *Mannesmann Demag Corp. v. Engineered Metal Products Co.*, 793 F.2d 1279, 230 USPQ 45 (Fed. Cir. 1986); *In re Crish*, 393 F.3d 1253, 73 USPQ2d 1364 (Fed. Cir. 2004)).

8. Claim 7 recites the limitation "the adsorber container" in line 2. There is insufficient antecedent basis for this limitation in the claim.

**9. Claims 7, 8, 9, and 11 are rejected as being dependent upon a rejected base claim.**

10. Claims 5, 7, 8, 9, 11 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: a harness and straps. Claim 5 recites, "Apparatus...which consists of...suspended...attached..." However, it is unclear as to how the apparatus suspends and is attached as such elements are not claimed and since the claim is constructed with "consists of" no additional elements can be included thus making it essential to have a harness and straps otherwise it is unclear how the device is suspended and attached.

**11. Claims 7, 8, 9, and 11 are rejected as being dependent upon a rejected base claim.**

Art Unit: 3644

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 5, 7, 8, 9 and 11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Vella (US 2002/0091363) in view of Ahnosorge et al. (US 2003/0505344).**

12. Re claims 5, 7, and 11, Vella discloses an apparatus (200, 320) that consists of a urine holding vessel (204) suspended under the belly (fig 1) and a urine collection device (310) attached to the perineum (fig 2) and communicating with the holding vessel (fig 2); wherein a filter (322) is incorporated into the collection device upstream of the holding vessel.

Vella fails to teach a permeable container with adsorbent material incorporated into the holding vessel wherein the adsorbent material is anionic resin.

Ahnosorge discloses it is known to have a permeable cartridge (para 31, the cartridge has an inlet and outlet thus is permeable to some degree as it allows fluid to pass through) with an adsorbent anion resins (0042).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Vella to “incorporate” the permeable cartridge with resins in order adsorb estrogen on site to allow for the most efficient transport of the raw material from the collection site as taught by Ahnosorge (paragraph 0014).

Art Unit: 3644

It should be noted, the Examiner contends the broadest reasonable interpretation of “incorporates” is to unite to form one body as defined by <http://www.merriam-webster.com/dictionary/incorporate>. In other words, incorporates is being broadly construed as connected to form a whole.

13. Re claim 8, Vella, as modified, fails to teach the mesh filter is polyamide mesh filter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the filter out of polyamide (nylon) for its known durability and strength, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

14. Re claim 9, Vella, as modified, fails to teach the filter is dosed with a mucolytic agent to remove mucous and mucosal cells and reduce viscosity. Ahnorsge discloses it is known to use precoated filters (paragrapoh 0067). It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Vella to use a precoated filter to reduce viscous substances and remove sediment from urine (paragraph 0067) as taught by Ahnorsge. Vella, as modified fails to teach the precoating on the filter is a mucolytic agent. The Examiner takes official notice it is old and well known in the art that a mucolytic agent is utilized to dissolve thick mucus and thus reduce viscosity. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to us a mucolytic agent as the precoating material as it is old and well known to dissolve mucus and, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the

Art Unit: 3644

intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA J. MICHENER whose telephone number is (571)272-1467. The examiner can normally be reached on Monday through Friday 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joshua J Michener/  
Examiner, Art Unit 3644

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Examiner  
Art Unit 3644